

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

DARYLE PHINNESSEE,

Petitioner,

vs.

NO. 1:11-cv-01385-JDB-egb

UNITED STATES OF AMERICA,

Respondent.

REPORT AND RECOMMENDATION

Referred to this Magistrate Judge for report and recommendation is the *pro se* motion by the Defendant, Daryle Phinnessee, to vacate, set aside or correct sentence by a person in federal custody pursuant to 28 U.S.C. §2255.

At the April 25, 2014 scheduled hearing of this matter, the Court was advised that Petitioner and the United States had reached an agreement. Appointed counsel C. Mark Donahoe and the United States had incorporated this agreement into a document titled Joint Motion to Vacate Sentence (D.E. 39). Petitioner, himself under oath, testified that he agreed to the terms of this order.

It is the report and recommendation that this Joint Motion to Vacate Sentence be accepted by the District Court and that the Defender be re-sentenced.

Respectfully submitted this 25th day of April, 2014.

s/Edward G. Bryant

UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.